

Office of the Secretary, Interior

§4.233

§4.232 Evidence; form and admissibility.

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the OHA deciding official's supervision as to the extent and manner of presentation of such evidence.

(b) The OHA deciding official may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any particular form being within the discretion of the OHA deciding official, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

(d) The OHA deciding official may in any case require evidence in addition to that offered by the parties in interest.

§4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in §4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to such will and to be in form and contents substantially as follows:

State of _____ County of _____
ss. I, _____, being first duly sworn, on oath, depose and say: That I am an _____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____; that on the _____ day of _____, 19____, I requested _____ to prepare a will for me; that the attached will was prepared and I requested _____ and _____ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained

to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

TESTATOR/TESTATRIX

We, _____ and _____, each being first duly sworn, on oath, depose and state: That on the _____ day of _____, 19____, _____ a member of the _____ Tribe of Indians of the State of _____, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness _____

Witness _____

Subscribed and sworn to before me this _____ day of _____, 19____, by _____ testator/testatrix, and by _____ and _____; attesting witnesses.

(Title)

If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the OHA deciding official may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the OHA deciding official may admit proof of the handwriting of the testator and of the

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attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper. The OHA deciding official may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts. In hardship situations, the OHA deciding official may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment he or she must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally. Costs of administration so allowed will have a priority for payment greater than that for any creditor claims allowed. Upon receipt of such order, the Superintendent must immediately initiate payment of such sums from the estate account, or if such funds are insufficient, then out of funds as they are received in such account prior to closure of the estate, with the proviso that such costs must be paid in full with a later allocation against the interest of a party, if the OHA deciding official has so ordered.

§ 4.235 Supplemental hearings.

After the matter has been submitted but prior to the time the OHA deciding official has rendered his or her decision, the OHA deciding official may upon his or her own motion or upon motion of any party in interest schedule a supplemental hearing if he or she deems it necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the OHA deciding official may announce the time and place for such supplemental

hearing to all those present and no further notice need be given. In that event the records must clearly show who was present at the time of the announcement.

§ 4.236 Record.

(a) After the completion of the hearing, the OHA deciding official will make up the official record containing:

- (1) A copy of the posted public notice of hearing showing the posting certifications;
- (2) A copy of each notice served on interested parties with proof of mailing;
- (3) The record of the evidence received at the hearing, including any transcript made of the testimony;
- (4) Claims filed against the estate;
- (5) Will and codicils, if any;
- (6) Inventories and valuations of the estate;
- (7) Pleadings and briefs filed;
- (8) Special or interim orders;
- (9) Data for heirship finding and family history;
- (10) The decision and the notices thereof; and
- (11) Any other material or documents deemed material by the OHA deciding official.

(b) The OHA deciding official must lodge the original record with the designated Land Titles and Records Office in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies. In those cases in which a hearing transcript has not been prepared, the verbatim recording of the hearing must be retained in the office of the OHA deciding official issuing the decision until the time allowed for rehearing or appeal has expired. In cases in which a transcript is not prepared, the original record returned to the Land Titles and Records Office must contain a statement indicating no transcript was prepared.

DECISIONS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.